

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DuCONRAD DAVIES, :
-----x

Petitioner, :
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-against- : **REPORT & RECOMMENDATION**

MARC GOFFMAN, DHS/ICE, : 09 Civ. 7224 (PAC)(KNF)
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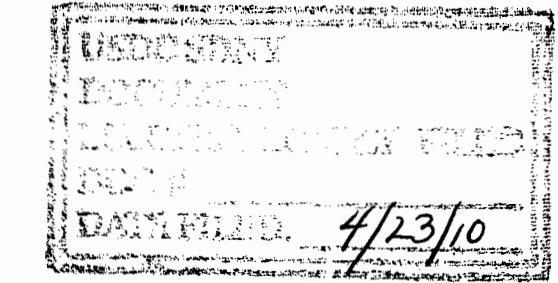
Respondent. :
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KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE

TO THE HONORABLE PAUL A. CROTTY, UNITED STATES DISTRICT JUDGE

On August 17, 2009, DuConrad Davies (“the petitioner” or “Davies”) filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241, challenging the “lawfulness of his detention by [the United States Immigration and Custom Enforcement agency (“ICE”)] for more than six months.” In December 2009, it was recommended that Davies’ petition be dismissed as moot, since Davies was released from ICE custody. In January 2010, Davies made an application, styled a motion, pursuant to “Rule 15(A)” of the Federal Rules of Civil Procedure, requesting that the court “grant [his] release from custody,” because he was again placed in ICE detention. The Court ordered that a response, to the petitioner’s motion, be filed, along with any documentation relevant to the detention Davies was then challenging.

In a writing dated April 21, 2010, the respondent states that, on January 26, 2010, Davies was removed from the United States; a copy of the executed warrant of removal, for Davies, is attached to the writing. Since Davies is no longer in the respondent’s custody, the relief



requested through his habeas corpus petition—release from the respondent’s custody—has been effected. Therefore, Davies’ January 2010 motion, for “release from ICE custody,” should be denied, as moot. See e.g., Bents v. Holder, No. 09-CV-0297A, 2009 U.S. Dist. LEXIS 60533, *2-3 (W.D.N.Y. July 14, 2009) (“in light of the fact that the petitioner’s removal has been effected and that the relief requested in the petition has been granted, *i.e.*, release from administrative detention pending removal, the respondents’ motion to dismiss the petition is granted and the petition is dismissed”); see also So v. Reno, 251 F. Supp. 2d 1112, 1121 (E.D.N.Y. 2003) (providing that, so long as the petitioner continues to demonstrate a live “case or controversy,” or, in other words, that “a ‘concrete and continuing injury’ that is a ‘collateral consequence’ of the detention and can be remedied by granting the writ” exists, the petitioner’s 28 U.S.C. § 2241 petition is not moot); Ramirez v. INS, 86 F. Supp. 2d 301, 304 (S.D.N.Y. 2004) (finding that the petitioner’s deportation rendered his habeas corpus petition, challenging his final order of removal, moot).

RECOMMENDATION

For the reasons set forth above, I recommend that the petitioner’s motion for the court to “grant [his] release from custody,” Docket Entry No. 10, be denied, as moot.

FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections, and any responses to objections, shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Paul A. Crotty, 500 Pearl Street, Room 735, New York, New York, 10007, and to the chambers of the

undersigned, 40 Foley Square, Room 540, New York, New York, 10007. Any requests for an extension of time for filing objections must be directed to Judge Crotty. FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. See Thomas v. Arn, 474 U.S. 140 (1985); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 57-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 (2d Cir. 1983).

Dated: New York, New York
April 23, 2010

Respectfully submitted,

Copies mailed to:

DuConrad Davies¹
Patricia Buchanan, Esq.

kevin nathaniel fox
KEVIN NATHANIEL FOX
United States Magistrate Judge

¹ The last known address, for Davies, was in an ICE detention facility, located at 201 Varick Street, New York, New York 10014. Since he is no longer in custody, and the respondent represents no address for Davies in Liberia is known, the Court is sending a copy of this Report and Recommendation to the last residential address Davies provided to the Court: 81-04 Rockaway Beach Blvd., Apt. 6B, Rockaway Beach, NY 11643, in the event that someone at that location might be aware of Davies' address.